

REMARKS/ARGUMENTS

Amendments

The claims are modified in the amendment. More specifically, claim 36 has been canceled; and claims 1 and 22 have been amended. Therefore, claims 1-5, 21-24, and 37-39 are present for examination. No new matter is added by these amendments. Applicant respectfully requests reconsideration of this application as amended.

Interviews After Final

Around the end of November, Examiner Kim granted three interviews to discuss proposed claim amendments. One of those interviews is summarized in the Interview Summary mailed on 12/03/2008. The Interview Summary appears to lack some of the detail of this interaction, which appears to have led to the Advisory Action not entering the above amendments. In these interviews, Applicants noted that claims 21, 36, 37, 38, and 39 were rejected in light of Stubler, which is established as not being prior art. Applicants proposed amending some form of claim 36 into the independent claims as it stood not properly rejected. After noting some 112 errors in one proposal and some clarification desired, the final claim amendment was submitted in the response to the final Office Action. Examiner Kim noted that additional searching would be required and that the amendments would be entered to allow performing such a search. The Advisory Action refused to enter the amendment or perform an additional search inconsistent with our discussions.

In a follow-up interview today, the confusion was resolved. Examiner Kim suggested submission of the amendment once again with an explanation of the sequence of events such that further problems would be avoided. Presumably, the amendment will be entered and considered to avoid an appeal of claims 21, 36, 37, 38, and 39 as they are not properly rejected. As any interview after final is discretionary, these opportunities are truly appreciated.

35 U.S.C. § 102 Rejection, Smith et al. in view of Barber et al.

The Office Action has rejected claims 1-5 and 22-24 under 35 U.S.C. §102 as being unpatentable over the cited portions of non-patent literature document "*Tools and techniques for color image retrieval*" to Smith et al. (hereinafter "Smith") in view of the cited portions of U.S. Patent No. 5,579,471 to Barber et al. (hereinafter "Barber"). Claims 21, 36, 37, 38, and 39 stand rejected in light of Stubler in an apparent 102 rejection. Paragraphs 12-16 of the final office action cite to Stubler as the basis of the rejection, but Stubler was established in the Advisory Action mailed on June 27, 2008 as not being prior art. As such, a rejection has not been set forth for these claims.

The amended claims are believed patentable over both Smith and/or Barber as the limitations in claim 36 were used to influence amendment of the claims. Further limitations were added based upon the Examiner's feedback in the late November interviews. Among other reasons, neither Smith nor Barber teach or suggest automatically adjusting the image factors used by the matching algorithm. To avoid an appeal and pre-appeal conference request, entry and consideration of the amended claims is respectfully requested.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance and an action to that end is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted, .

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